Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	File No. EB-02-TP-618
Power Country, Inc.	)	
	)	NAL/Acct. No. 200332700022
Licensee of AM Radio Station WGRO,	)	
Lake City, Florida	)	FRN 0001-8101-75
	)	

FORFEITURE ORDER

Adopted: July 8, 2004 **Released: July 12, 2004**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("*Order*"), we issue a monetary forfeiture in the amount of one thousand dollars ($1,000) to Power Country, Inc. ("PCI"), licensee of AM radio station WGRO, Lake City, Florida, for willful violation of Section 73.49 of the Commission's Rules ("Rules").[1] The noted violation involves PCI's failure to maintain an effective locked fence around the base of its AM antenna tower.

II. BACKGROUND

2. On November 22, 2002, two agents from the Commission's Tampa Field Office ("Tampa Office") inspected PCI's AM antenna tower for station WGRO(AM) in Lake City, Florida. The agents observed that the antenna tower had radio frequency potential at its base. They also found the station's AM antenna tower was not enclosed within an effective locked fence. A lock was attached to the fence post but one side of the hinge and hasp was not attached to the gate, thus rendering the fence ineffective.

3. On May 1, 2003, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* ("*NAL*") to PCI in the amount of seven thousand dollars ($7,000).[2] PCI filed a response to the *NAL* on June 2, 2003 seeking a reduction or cancellation of the proposed forfeiture. PCI claims the inner base fence surrounding the AM tower was locked and effective before the inspection. It states the hasp fell away from the fence post "when an inspector pulled on the lock."[3] PCI asserts that even if the inner base

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[1] 47 C.F.R. § 73.49.

[2] *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332700022 (Enf. Bur., Tampa Office, released May 1, 2003).

[3] PCI Response at 2.

fence was ineffective, an outer fence surrounded the property and constituted an "effective locked fence at all times."[4] PCI also provided a receipt for an order for a new inner base fence it placed almost a week before the agents' inspection. Finally, PCI claims it is unable to pay the $7,000 forfeiture and submitted supporting financial documentation.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),[5] Section 1.80 of the Rules,[6] and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining PCI's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.[7]

5. Section 73.49 of the Rules requires AM antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) to be enclosed within an effective locked fence or other enclosure.[8] PCI asserts its inner base and outer field fences complied with this requirement. We disagree. Upon arrival, the agents observed that the inner base fence was ineffective, because one side of the gate hinge and hasp was not connected to the fence. This break in the gate was apparent to naked eye and would allow anyone access to the tower. Contrary to PCI's assertions, the agents did not touch or pull on the lock at any time during the inspection. The gate hinge and hasp was in this condition when the agents arrived. The agents also observed that the outer fence surrounding the property was not effective even though the outer gate was locked, because the fence did not encompass one side of the property. In fact, the agents did not enter the outer fence through the locked gate; rather they were instructed by the station's general manager to avoid the main gate and enter the property through the unfenced side. Thus, at the time of the inspection, the outer fence did not enclose the property and was incapable of protecting or preventing access to the antenna tower.

6. PCI asserts that the forfeiture should be reduced or cancelled because it placed an order to repair the inner base fence prior to the agents' inspection. Although we do not believe that PCI's efforts to comply are sufficient to justify canceling the forfeiture, we do believe that those same efforts constitute good faith on its part that merit a reduction of the proposed forfeiture.[9]

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[4] *Id.*

[5] 47 U.S.C. § 503(b).

[6] 47 C.F.R. § 1.80.

[7] 47 U.S.C. § 503(b)(2)(D).

[8] 47 C.F.R. § 73.49.

[9] *See Radio One Licenses, Inc.*, 18 FCC Rcd 15964 (2003).

7. Finally, we have reviewed the financial information provided by PCI, and we find that this information also provides a basis for reduction of the forfeiture on the basis of inability to pay.[10]

8. We have examined PCI's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that PCI willfully violated Section 73.49 of the Rules[11] and find that, although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to $1,000 is appropriate based on PCI's good faith efforts to comply and its financial situation.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,[12] Power Country, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand dollars ($1,000) for willfully violating Section 73.49 of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.[13] Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200332700022, and FRN 0001-8101-75. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.[14]

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[10] The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.,* 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation,* 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues). In this case, the reduced forfeiture represents a smaller percentage than those issued in the *Local Long Distance, Inc.* and *Hoosier Broadcasting Corp.,* cases, and only a slightly higher percentage compared to the forfeiture issued in *PJB Communications of Virginia, Inc.*

[11] Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' … means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act …." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

[12] 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

[13] 47 U.S.C. § 504(a).

[14] *See* 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Power Country, Inc.'s counsel, Stephen Hartzell-Jordan of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, Post Office Box 1800, Raleigh, NC 27602.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau